

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 681

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO HEALTH; REQUIRING A PERMIT FROM THE DEPARTMENT OF
HEALTH TO SELL CERTAIN FOOD OR DRINK IN PUBLIC SCHOOLS;
CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. PUBLIC SCHOOL FOOD AND DRINK VENDOR PERMIT
REQUIRED--STUDENT WELLNESS FUND CREATED.--

A. Except as provided in Subsection D of this
section, a person shall not offer food or drink for sale in a
public school without a valid public school food and drink
vendor permit for that school. A school district or public
school shall not enter into an agreement or otherwise allow a
person to offer food or drink for sale in a public school
unless that person has a valid public school food and drink
vendor permit for that school. Except for permits issued

.156291.1

1 pursuant to Paragraph (1) of Subsection B of this section, a
2 separate permit is required for each public school.

3 B. Public school food and drink vendor permits
4 shall be issued by the department of health and shall be valid
5 from the date issued through the following June 30. The
6 department shall impose the following fees for the permits:

7 (1) two hundred fifty dollars (\$250) for a
8 permit to sell food or drink in all public schools in a school
9 district if the district has a total student enrollment of two
10 hundred or less; and

11 (2) if the school district has a total student
12 enrollment of more than two hundred:

13 (a) seven hundred fifty dollars (\$750)
14 for a permit to sell food or drink in each public school
15 facility that has a student enrollment greater than five
16 hundred;

17 (b) five hundred dollars (\$500) for a
18 permit to sell food or drink in each public school facility
19 that has a student enrollment of five hundred or less but more
20 than two hundred; and

21 (c) two hundred fifty dollars (\$250) for
22 a permit to sell food or drink in each public school facility
23 that has a student enrollment of two hundred or less.

24 C. Unless exempted pursuant to Subsection D of this
25 section, the requirement for a public school food and drink

1 vendor permit applies to:

2 (1) each person who owns or leases one or more
3 vending machines that are placed in a public school for the
4 purpose of dispensing food or drink; and

5 (2) each person who operates a location in a
6 public school, other than a vending machine, from which food or
7 drink is sold.

8 D. The requirement for a public school food and
9 drink vendor permit does not apply to:

10 (1) a person selling food or beverage as part
11 of a school meal program that meets guidelines established by
12 the United States department of agriculture;

13 (2) a nonprofit organization temporarily
14 selling food or drink from a location other than a vending
15 machine;

16 (3) a public school or school district that
17 owned or leased vending machines on January 1, 2005 but only if
18 the number of vending machines owned or leased by the public
19 school or school district does not increase above the number
20 owned or leased on that date; or

21 (4) a person who owned or leased at least one
22 but no more than ten vending machines that were placed in
23 public schools on January 1, 2005 but only if the number of
24 vending machines owned or leased by the person and placed in
25 public schools does not increase above the number of such

.156291.1

underscored material = new
[bracketed material] = delete

1 machines on that date.

2 E. Receipts from the issuance of public school food
3 and drink vendor permits shall be deposited by the department
4 of health into the "student wellness fund", hereby created in
5 the state treasury. Earnings from investment of the student
6 wellness fund shall be credited to the fund. Money in the
7 student wellness fund is subject to appropriation by the
8 legislature for school-based health centers and child nutrition
9 and wellness education activities. Any unexpended or
10 unencumbered balance remaining at the end of a fiscal year
11 shall not revert. Disbursements from the student wellness fund
12 shall be made upon warrants drawn by the secretary of finance
13 and administration pursuant to vouchers signed by the secretary
14 of health.

15 F. The secretary of health and the secretary of
16 public education shall jointly promulgate such rules as are
17 necessary to carry out the provisions of this section,
18 including procedures for an application process for schools to
19 apply for grants from the student wellness fund. The rules
20 shall provide that priority for the grants be given to schools:

21 (1) located in a health care underserved area
22 as determined by the department of health; or

23 (2) in which fifty percent or more of the
24 students are eligible to receive a free or reduced-price lunch.

25 Section 2. TEMPORARY PROVISION--EXISTING VENDING MACHINE

.156291.1

1 CONTRACTS.--

2 A. A person who owns or leases one or more vending
3 machines that are in a public school on July 1, 2005, and
4 otherwise subject to the requirement for a public school food
5 and drink vendor permit pursuant to Section 1 of this act, may,
6 subject to the provisions of Subsection B of this section,
7 continue dispensing food or drink without a permit if:

8 (1) each vending machine is in the public
9 school pursuant to a contract entered into prior to January 1,
10 2005;

11 (2) the term of the contract extends beyond
12 July 1, 2005; and

13 (3) the contract does not allow the vending
14 machine to be removed from the public school prior to July 1,
15 2005.

16 B. A person meeting the qualifications of
17 Subsection A of this section who does not increase the number
18 of vending machines in the school is exempt from the
19 requirement for a public school food and drink vendor permit
20 until the date that the contract terminates or any earlier
21 date, specified in the contract, that allows the vending
22 machine to be removed from the school or provides for contract
23 renegotiation.

24 Section 3. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2005.

.156291.1